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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,211	09/18/2003	Craig A. Cascone	A02174US (98667.1)	7179
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GARVEY SMITH NEHRBASS & DOODY, LLC THREE LAKEWAY CENTER 3838 NORTH CAUSEWAY BLVD., SUITE 3290 METAIRIE, LA 70002				
			EXAMINER KAUFFMAN, BRIAN K	
			ART UNIT 3765	PAPER NUMBER

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,211

Applicant(s)

CASCONI, CRAIG A.

Examiner

Brian K Kauffman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 4 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

New corrected drawings are required in this application because the drawings are objected to under 37 CFR 1.84. Figures 1-6 contain shading. Shading is not permitted. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

The specification is objected to because of the following informalities: on page 1, line 32, the word "blown" should be inserted after the word "and". On page 1, line 32, the word "back" should be modified to read "backward". On page 1, line 32, the word "had" should be changed to read "hat". On page 5, line 26, the word "wear's" should be changed to "wearer's".

Appropriate correction is required.

Claim Objections

Claim 1 is objected to because of the following informalities: in claim 1, line 23, the word "wear" should be changed to "wearer". Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 5-6, and 8-9 are rejected under 35 U.S.C. 103(a) as being anticipated by Sherman (5,181,277) in view of McCallum et al. (5,724,678) in further view of Armstrong (D365,917). Sherman discloses a reversible cap, comprising: a crown having a first layer (11), a second layer (12) and a domed shape that enables a user to wear and conform the crown to the user's head (fig. 1), wherein either layer can be shaped into a concavity that abuts the user's head during use and wherein the other layer defines an outer exposed surface; wherein both layers are made of different materials. Sherman does not disclose a bill made from a floating foam material that has a first curved edge that is stitched to the crown between the first and second layers, the bill having a second curved edge defining a front of the cap. McCallum et al. does disclose a bill (20) made from a floating foam material that has a first curved edge that is stitched to the crown between the first and second layers, the bill having a second

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curved edge defining a front of the cap. McCallum et al. teaches that the bill of the hat may be of suitable foam material for floatation purposes (col. 6, lines 26-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Sherman's cap to include a bill made from a foam material as taught by McCallum et al. for floatation purposes.

The combination of Sherman's and McCallum et al.'s device does not disclose an adjustment cord that extends through an opening in at least one of the layers at a position opposite the bill, the cord having end portions that are attached to the crown at two positions generally on opposite sides of the opening; a sleeve that adjustably, slidably attaches to the cord to form an adjustable loop with the cord; and wherein a user can adjust the fit of the hat to his or her head by moving the cord relative to the sleeve so that the loop is enlarged or reduced in size, the cap fits the wearer when either the first or second layer is the outer exposed surface; the cord opening is a slotted opening and is bordered by stitching. Armstrong does disclose an adjustment cord that extends through an opening in at least one of the layers at a position opposite the bill, the cord having end portions that are attached to the crown at two positions generally on opposite sides of the opening; a sleeve that adjustably, slidably attaches to the cord to form an adjustable loop with the cord; and wherein a user can adjust the fit of the hat to his or her head by moving the cord relative to the sleeve so that the loop is enlarged or reduced in size, the cap fits the wearer when either the first or second layer is the outer exposed surface; the cord opening is a slotted opening and is bordered by stitching (fig.1) The use of an adjustment cord with an adjustable sleeve allows for the

hat to be fit to the user's head. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combination of Sherman's and McCallum et al.'s device to have an adjustment cord with an adjustable sleeve as taught by Armstrong in order for the hat be adjustably fit to the user's head.

Allowable Subject Matter

Claims 4 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

Claim 4 specifically requires that the cord end portions be attached to the hat with stitching.

Claim 7 specifically requires that the cord end portions be attached to the hat with stitching that joins the cord end portions to both the first and the second layer of the crown.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

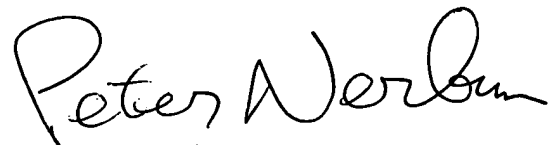
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian K Kauffman whose telephone number is (703)605-4933. The examiner can normally be reached on M-F every week.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703)305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BKK


Peter Nerbun
Primary Examiner